

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ELIZABETH YEGHIAZARIAN,

Plaintiff,

v.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT, *et al.*,

Defendants.

2: 12-cv-00158-MMD- VCF

O R D E R

Before the court are plaintiff Elizabeth Yeghiazarian's Motions for Extension of Time to Serve Summons and Amended Complaint on Defendant Officer David Moody, and for an Order for Service by Publication. (#20 and #21).¹

Plaintiff filed her original Complaint on January 30, 2012. (#1). Plaintiff filed her Amended Complaint on January 31, 2012, against defendants Las Vegas Metropolitan Police Department (LVMPD), Sheriff Douglas C. Gillespie (Gillespie), Detective William Redfair (Redfair), Officer Jared Wicks (Wicks), Officer Dave Moody (Moody), and Barbara Doran (Doran). (#2). Summons were issued to defendants LVMPD, Gillespie, Redfair, and Doran on February 2, 2012. (#6). Summons were issued to defendants Wicks and Moody on March 7, 2012. (#8). LVMPD was served on March 23, 2012. (#9). Barbara Doran was served on March 28, 2012. (#10). Gillespie, Redfair, and Wicks were served on April 4, 2012. (#11, #12, #13). On May 23, 2012, the plaintiff filed the instant Motions for Extension of Time to Serve Summons and Amended Complaint, and for an Order for Service by Publication. (#20 and #21).

Plaintiff asks this Court to permit service by publication of the Summons and Amended

¹Plaintiff filed one document titled "Motion for Extension of Time to Serve Summons and Amended Complaint on Defendant Officer Dave Moody, and for an Order for Service by Publication" on May 23, 2012. On May 24, 2012, the Clerk separated the documents into two docket entries (#20 and #21) pursuant to Special Order 109.

1 Complaint on defendant Moody pursuant to Nevada Rule of Civil Procedure 4(e), as provided by
2 Federal Rule of Civil Procedure 4(e)(1). (#21). Plaintiff also asks this Court to grant an additional sixty
3 days to serve defendant Moody, under Federal Rule of Civil Procedure 4(m). (#20).

4 **No Opposition**

5 Defendants have not filed an opposition to the plaintiff's motions. Granting the plaintiff's
6 motions is warranted because "the failure of an opposing party to file points and authorities in response
7 to any motion shall constitute a consent to the granting of the motion." See LR 7-2(d).

8 **Service by Publication**

9 Pursuant to Fed. R. Civ. P. 4(e)(1), "an individual – other than a minor, an incompetent person,
10 or a person whose waiver had been filed – may be served in a judicial district of the United States by
11 following state law for serving a summons in an action brought in courts of general jurisdiction in the
12 state where the district court is located or where service is made." Under Rule 4(e)(1) of the Nevada
13 Rules of Civil Procedure, "when the person on whom service is to be made resides out of the state, or
14 has departed from the state, or cannot, after due diligence, be found within the state, or by concealment
15 seeks to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the
16 court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a
17 cause of action exists against the defendant in respect to whom the service is to be made, and that the
18 defendant is a necessary or proper party to the action, such court or judge may grant an order that the
19 service be made by the publication of summons." Nev. R. Civ. P. (4)(e)(1).

20 Plaintiff asserts that multiple attempts to locate defendant Moody have been unsuccessful.
21 (#20). In support of her assertion, plaintiff provided the Court with an Affidavit of Non-Service (#20-2
22 Exhibit 2), an invoice reflecting the process server's efforts to serve or locate defendant Moody (#20-3
23 Exhibit 3), and the declaration of counsel (#20-4 Exhibit 4). Plaintiff alleges that defendant Moody
24 retired from the LVMPD and as such, LVMPD Risk Management could not accept service on his
25 behalf because he was no longer an employee. (#20). Plaintiff's counsel submits to the Court in his
26

1 declaration that “a valid cause of action exists” against defendant Moody. (#20-4 Exhibit 4). Plaintiff
2 submits that the defendant is “a key player in this action.” (#20).

3 The Court finds that pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1), permitting
4 service by publication of the Summons and the Amended Complaint on defendant Moody is warranted.
5 Pursuant to Rule (4)(e)(1)(iii), the publication must be “made in a newspaper, published in the State of
6 Nevada . . . for a period of 4 weeks, and at least once a week during said time.” Nev. R. Civ. P.
7 4(e)(1)(iii).

8 **Extension for Service**

9 Pursuant to Fed. R. Civ. P. 4(m), a defendant must be served within 120 days after the complaint
10 is filed. If “the plaintiff shows good cause for the failure [to serve a defendant within 120 days], the
11 court must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

12 Here, plaintiff was required to serve defendant Moody by May 30, 2012. (#20). Plaintiff asserts
13 that an additional sixty days is required to serve defendant Moody. (#20). Plaintiff asks this Court to
14 extend the 4(m) deadline to July 29, 2012. *Id.* As plaintiff has demonstrated “good cause” for her
15 failure to effectuate service, and has provided support for her request for an extension, the Court will
16 extend the 4(m) deadline until July 29, 2012. *See* Fed. R. Civ. P. 4(m).

17 Accordingly, and for good cause shown,

18 IT IS ORDERED that plaintiff Elizabeth Yeghiazarian’s Motions for Extension of Time to Serve
19 Summons and Amended Complaint on Defendant Officer David Moody, and for an Order for Service
20 by Publication (#20 and #21) are GRANTED.

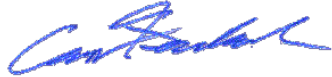
21 IT IS FURTHER ORDERED that pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1),
22 the summons in this action shall be served by publication in a newspaper, published in the State of
23 Nevada, for a period of 4 weeks, and at least once a week during that time

24 ...

25 ...

1 IT IS FURTHER ORDERED that the deadline to serve defendant Moody shall be extended up
2 to and including July 29, 2012.

3 DATED this 1st day of June, 2012.



4 **CAM FERENBACH**
5 **UNITED STATES MAGISTRATE JUDGE**